

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

KRZYSZTOF ZARAZINSKI,)
Complainant,)
)
v.) 8 U.S.C. § 1324b Proceeding
) CASE NO. 92B00152
ANGLO FABRICS CO., INC.)
Respondent.)
_____)

FINAL DECISION AND ORDER

(July 14, 1994)

Appearances:

For the Complainant
Krzysztof Zarazinski, Pro Se

For the Respondent
Perry Heidecker, Esquire
Marshall M. Miller Associates, Inc.

Before: ROBERT B. SCHNEIDER
 Administrative Law Judge

I. *Introduction & Procedural History*

Krzysztof Zarazinski, a naturalized U.S. citizen who was born in Poland, filed the complaint in this case against Anglo-Fabrics Co., Inc. ("Anglo Fabrics" or "the company"), alleging that Respondent refused to rehire him as a floorman because of his national origin and citizenship status and that Respondent threatened him with physical harm after he stated that he was going to file a complaint against the company, in violation of section 102 of the Immigration Reform & Control Act of 1986 ("IRCA"), as amended, 8 U.S.C. § 1324b. I have jurisdiction over this matter pursuant to 8 U.S.C. § 1324b and 28 C.F.R. § 68.28.

On December 23, 1991, Complainant initiated the proceedings in this case by filing a written charge with the Office of the Special Counsel for Unfair Immigration-Related Employment Practices ("OSC"), in which he alleges that Anglo Fabrics discriminated against him based on his national origin and citizenship status.¹ See Complaint, ¶ 17.

In a letter dated February 19, 1992, OSC notified Complainant that based on its investigation, it had determined that there was "insufficient evidence of reasonable cause to believe [Zarazinski was] discriminated against as prohibited by 8 U.S.C. § 1324b." OSC thus informed Complainant that it would not file a complaint before an administrative law judge ("ALJ") based on his charge.

Pursuing his right to bring a private action under 8 U.S.C. § 1324b(d)(2), Zarazinski filed a *pro se* complaint on July 20, 1992, alleging that Respondent knowingly and intentionally failed to rehire him in July 1991 for the job of floorman because of his citizenship status and national origin, in violation of 8 U.S.C. § 1324b(a)(1)(A) and (a)(1)(B) and further alleges that Respondent intimidated, threatened, coerced or retaliated against him by telling him not to file the complaint in this case, in violation of 8 U.S.C. § 1324b(a)(5).

¹ The standard form for § 1324b charges filed with OSC states at paragraph 9: "Describe the Unfair Employment Practice . . ." In that space on Complainant's charge, he wrote "see copy of letter attached, dated October 28, 1991 from Walter R. Snyder, Jr., Esq. as addressed to U.S. Department of Labor" ("Ex. C-3"). That exhibit, however, inadvertently was not filed with this office until October 27, 1993, when OSC, pursuant to my request, sent a facsimile to this office. In that letter, Snyder, apparently representing Complainant at the time, stated: ". . . Zarazinski is personally aware that illegal aliens with questionable Social Security Numbers are being employed as part of [Anglo Fabrics'] work force and represent the actual reason for discriminating against him in the matter of his [failure to be rehired] by Anglo Fabrics." At that time in this proceeding, the basis for Complainant's citizenship status claim was not clear.

Also, Complainant attached a letter to the complaint, explaining the reasons he believes he was not rehired, in which he states:

I was employed [by Anglo Fabrics] for four years until I suffered a work-related accident. I then was laid off for "lack of work" and haven't been called back, although others, particularly non-U.S. citizens have been given positions. Others who were also laid off at the same time as I was have been called back and people who have just recently entered the country have been granted positions at Anglo Fabrics while I am still unemployed.

In view of Complainant's pro se status and the indication by Respondent's counsel that he did not intend to file a motion for summary decision, I issued an order on November 6, 1992, informing the parties that an ALJ may enter summary decision sua sponte in favor of a party that has not requested it when the adverse party has been given adequate notice that summary decision may be imposed against it. See Amended Decision and Order Denying Respondent's Motion to Dismiss for Failure to State a Claim, Entering Partial Summary Decision Sua Sponte in Favor of Respondent and Dismissing in Part the Complaint, part III(A)(3)(B). I therefore directed both parties to respond to a number of interrogatories to determine whether the undisputed material facts supported a summary decision.

The parties filed timely responses. See Complainant's Answers to ALJ's Interrogatories ("Compl.'s Answers to ALJ's Interrogs.1"); Respondent's Memorandum of Law ("Resp.'s Mem.") and the Affidavit of Respondent's counsel, Perry S. Heidecker ("Heidecker Aff.") with exhibits. On June 9, 1993, I issued an order directing Complainant to respond to Respondent's statement of facts and discovery and directing Respondent to serve its discovery. On September 21, 1993, I issued an order directing the parties to submit additional evidence. In response to my orders of June 9, 1993 and September 21, 1993, Respondent filed the affidavits of Anglo Fabrics Superintendent, Edwin Bruell ("Ex. ALJ-4") and Anglo Fabrics Personnel Manager, Sally Antos ("Ex. ALJ-1"). Complainant filed a response to Respondent's version of the facts ("Compl.'s Version of Facts") and provided information regarding his work history and immigration status ("Ex. ALJ-3").

I also issued an order on February 18, 1994, directing the Complainant to respond to interrogatories, to which he timely filed a response.² See Complainant's Answers to ALJ's Second Set of

² Although I also directed Respondent to respond to one interrogatory, Respondent never received that order because this office inadvertently sent it to the wrong address.
(continued...)

Interrogatories ("Compl.'s Answers to ALJ's Interrogs.²"). On April 18, 1994, I issued an Order Directing Complainant to Submit Evidence Regarding His Claim of Threat in Violation of IRCA by April 25, 1994. On April 28, 1994, my office staff telephoned Complainant to find out whether he had mailed a response to that order. On May 2, 1994, Complainant filed a letter in which he apologized for his untimely response, asserting that "English reading comprehension is not one of [his] strong points and legal jargon is beyond [his] ability" and that not until my office staff explained to him in layman's terms the directives of my Order of April 18, 1994 did he understand what he was directed to do ("Ex. ALJ-2").³ Complainant asserts in this letter that

Maria Rucinska and Jadwiga Kaminska worked in the same department as I. One of my 'not mentioned' duties was to act in the capacity of an interpreter in that department since I was the only one there who was able to speak both Polish and English. Maria Rucinska and Jadwiga Kaminska both admitted to me that they were illegal (sic) aliens.

Zarazinski also requests in his letter that I issue a court order so that "Boston Immigration Office and their agents can investigate Anglo Fabrics Co. Inc." Attached to the letter as an exhibit is a copy of Maria Rucinska's pay stub.

On May 3, 1994, I issued a decision and order denying Respondent's motion to dismiss for failure to state a claim, entering partial summary decision sua sponte in favor of Respondent on the allegations of national origin and citizenship status discrimination and dismissing those portions of the complaint.

On May 5, 1994, I issued a subpoena to paralegal Deborah Murrayor any custodian of records at the Volunteer Lawyers Service of Legal Assistance Corporation of Central Massachusetts ("Volunteer Lawyer Service") for purposes of obtaining information that I believed was relevant to determining whether Bruell or another agent of Respondent had threatened Complainant, in violation of 8 U.S.C. § 1324b(a)(5). The subpoena commanded the Volunteer Lawyer Service

²(...continued)

As the interrogatory merely requested Respondent's correct name (as variations on the name "Anglo Fabrics" had been used throughout the proceeding), in lieu of reissuing that order, my staff telephonically requested and received that information from Respondent's counsel).

³ Although Complainant's response to my order of April 18, 1994 was seven days late, in view of his pro se status and his difficulty with English comprehension, I accepted his filing as timely.

representative to mail to this office any memorandum indicating what Zarazinski had said regarding his claim during the interview referenced in a letter dated June 9, 1992 from Volunteer Lawyer Service to Zarazinski, which Zarazinski had filed earlier in this case. The June 9, 1992 letter (Ex. C-6) indicates that Complainant contacted an attorney of Volunteer Lawyer Services regarding the pending case and that the office was not able to provide him with pro bono representation. I attached a copy of that letter to the subpoena.

On May 13, 1994, I held an evidentiary hearing in Boston, Massachusetts to determine whether Respondent's agent, Edwin Bruell, threatened to physically harm Complainant if Complainant were to file a complaint with the U.S. Department of Justice because of Respondent's alleged failure to hire Complainant in lieu of aliens unauthorized for employment. Two witnesses testified for Complainant and two witnesses testified for Respondent.

On May 18, 1994, I issued an errata of the May 3, 1994 decision and order. That same day, I issued an Amended Decision and Order Denying Respondent's Motion to Dismiss for Failure to State a Claim, Entering Partial Summary Decision Sua Sponte in Favor of Respondent and Dismissing in Part the Complaint ("Amended Decision & Order"), in which typographical errors were corrected and previously omitted case citations and explanations were added to clarify the law on disparate treatment.

On May 19, 1994, I issued an Order Including Additional Exhibits for Consideration in Making a Final Decision in This Case.⁴ Because not all of the many pleadings and documents filed in this case are helpful to determining the merits of Complainant's case, I informed the parties that I would incorporate into the hearing record the following selected exhibits marked as Administrative Law Judge exhibits ("Ex. ALJ- "), admitting them into evidence (unless objections would be made thereto and sustained) for the purpose of determining the remaining allegation in the complaint: (1) the October 13, 1993 affidavit of Sally Antos (Ex. ALJ-1); (2) the letter dated April 28, 1994 from Krzysztof Zarazinski to this office with attached pay stub of Maria Rucinska (Ex. ALJ-2); (3) the letter dated October 25, 1993 from Krzysztof Zarazinski to this office discussing his work history and immigration status (Ex. ALJ-3); and (4) the December 21, 1993 affidavit of Edwin Bruell (Ex. ALJ-4).

⁴ During the hearing, I had stated that I would incorporate into the hearing record the pleadings and exhibits previously filed in this case.

I told the parties that they could object on appropriate grounds to the introduction of ALJ exhibits 1-4 and/or submit any responses thereto by filing the appropriate pleading, letter or statement with this office on or before June 3, 1994.⁵

Although Respondent's counsel stated at the evidentiary hearing that he had mailed his first set of interrogatories to Complainant, the record is unclear as to whether Respondent's counsel, pursuant to my order of June 9, 1993, mailed by certified mail another set of its discovery requests to Complainant and, if so, whether Complainant received the discovery requests and answered them. I gave Respondent until June 3, 1994 to clarify the facts relating to service of its discovery requests on Complainant in compliance with my order of June 9, 1993 because if the interrogatories were mailed and delivery refused a second time or accepted and Complainant did not respond to them, sanctions could be in order. See 28 C.F.R. § 68.23(c). Respondent did not file a clarification of the facts surrounding this issue.

On May 23, 1994, Hugh D. Heisler, Executive Director and Custodian of the Records of the Volunteer Lawyers Service filed a petition to revoke the subpoena issued May 5 on the grounds that it had not been able to ascertain if Zarazinski was willing to waive his attorney-client privilege. On May 26, 1994, I issued an Order Directing Complainant to Submit a Statement Regarding Waiver of His Attorney/Client Privilege, in which I directed Complainant to state in writing whether he would waive his attorney/client privilege with regard to any information he provided to Volunteer Lawyers Service and any information Volunteer Lawyers Service provided him. I also directed Volunteer Lawyers Service to comply with the subpoena within a specified time period if Complainant waived his attorney client privilege.

On May 31, 1994, Complainant filed an objection to the admission into evidence of exhibits ALJ-1 and ALJ-4 "on the grounds of hearsay and it (sic) being argumentative."

On June 6, 1994, Hugh D. Heisler filed a request to withdraw the Petition to Revoke Subpoena of the Volunteer Lawyers Service. Attached to that request was a memorandum prepared by Jan Chiarretto, the attorney who interviewed Complainant when he sought

⁵ I reminded Complainant that if he chose to file a response to any of the ALJ exhibits he should make sure to mail a copy of his response(s) to Respondent's counsel.

services with the Volunteer Lawyers Service in 1992 ("Chiaretto Mem."). That memorandum, dated May 28, 1992, states:

Mr. Zarazinski is alleging employment discrimination against his employers, Angora (sic) Fabrics in Webster, Massachusetts. He has been employed with Anglo for a number of years and was laid off last July. I have enclosed some letters that he has already pursued with counsel to the Labor Department. Apparently the thrust of his accusation is that they have refused to rehire him because they are filling positions with illegal aliens. He seems to think he has a lot of proof about this. He is also pursuing at this point a complaint with MCAD at my behest. I gave him the information and I gave him the name and the number of the person he is going to call and talk to about pursuing this at the state level. In the meantime, the U.S. Department of Justice came back and said that they don't believe his case is strong enough to take any further [action] but he can appeal that decision. He's looking at this point specifically for someone to write them a letter requesting an appeal. It shouldn't be difficult and it is possible that this office could do it except I don't think we should be in this case for the long haul. If we have an attorney who is willing to explore the MCAD portion of his complaint and look towards discrimination that could be remedied that way, then perhaps VLS should take this case. I made him no promises but sat for like an hour talking to this man listening to him. He is very focused and he is very determined but neither one of us know whether he has any kind of a case or not. If anything, perhaps we can run this by someone with more expertise for their opinion. Naturally any questions you can just refer back to me and I can thread through some of the correspondence I gave you.

Chiaretto Mem. at 1-2.

On June 8, 1994, I issued a Post-Hearing Order Admitting into Evidence Additional Documents and Letters in which I found that Complainant had waived his attorney/client privilege based on the fact that Volunteer Lawyer Services complied with my subpoena. Also in that order, I overruled Complainants' objections and admitted all four ALJ exhibits into evidence because (1) hearsay evidence is admissible in administrative proceedings if relevant and reliable; (2) I did not find Bruell's affidavit conclusory; and (3) Complainant had copies of exhibits ALJ-1 and ALJ-4 prior to the evidentiary hearing and therefore had an opportunity to cross-examine both witnesses about their statements during the hearing.

II. *Statement of Facts*

Krzysztof Zarazinski was born February 12, 1939 in Poland in a village approximately 60 miles from Warsaw. (Tr. at 18.) His education consisted of seven years of grammar school in Poland. (Tr. at 19) Zarazinski immigrated to the United States on April 12, 1960. (*Id.*; Ex. ALJ-3.) He became a naturalized citizen on December 13, 1972. (Ex. ALJ-3.)

Zarazinski worked for Webster Shoe Shop from 1960-62. (Tr. at 19.) He then worked for American Optical Company from 1962-84, first as a lenses blocker and then as an industrial washer of lenses. (Tr. at 19-21.) Complainant was laid-off from his job at the optical company in 1984. (Tr. at 22.) Zarazinski filed a charge of discrimination against the American Optical Company after he was laid-off "because they have a lot of Hispanic people and they get the jobs and that you need whatever, and so I give up." (Tr. at 27.) Zarazinski then worked for Johnson Corrugated from 1985-88 where he assisted in the making of boxes. (Ex. ALJ-3.) He was laid-off March 27, 1988. (Tr. at 26.) Complainant then worked for Anglo Fabrics at various jobs from 1988 to 1991, with intermittent lay-offs. Complainant is now unemployed. (Id.)

Anglo Fabrics, a manufacturer of fine woolen and worsted fabrics, has been in business since 1945. (Tr. at 166.) The company maintains offices and a manufacturing facility for these purposes in Webster, Massachusetts and has employed approximately 362 employees at all times relevant to the allegations in the complaint, many of whom are of Polish descent and permanent resident aliens or naturalized citizens. (Heidecker Aff. ¶ 2.) Moreover, Respondent's three highest-ranking executives are naturalized citizens. (Id. at ¶ 3.)

Sally A. Antos, Personnel Manager at Anglo Fabrics, has been employed there since January 18, 1988. (Tr. at 184.) As Personnel Manager, she is the person with whom employees and potential employees discuss the availability of work at Anglo Fabrics. (Tr. at 185.) It is also her job responsibility to ensure the company's compliance with IRCA's employment eligibility verification requirements, 8 U.S.C. § 1324a(b). More specifically, she ensures preparation of the Immigration and Naturalization Service ("INS") Employment Eligibility Verification Form ("Form I-9" or "I-9 Form"), by directing the new employee to fill out and sign the top half and by filling out and signing the bottom half herself based on supporting documentation provided by the employee and signing it. (Tr. at 197, 199.) It is her practice to require such forms of all new employees without exception. (Tr. at 199.)

Edwin E. Bruell, Superintendent of Anglo Fabrics is 75 years old and has been employed by Anglo Fabrics for 46 years. (Tr. at 163.) Bruell was born in southern Poland and immigrated to the United States in 1947. (Tr. at 164.) He is a naturalized U.S. citizen. (Tr. at 167.) Bruell has a degree in textiles from a school in Poland and a university in England. (Tr. at 163.)

Zarazinski and Bruell met in 1987 or 1988, when Zarazinski approached Bruell in the yard of a Catholic church on a Sunday morning and told Bruell that he was discriminated against by the American Optical Company. (Tr. at 164.) Bruell knew of Zarazinski as the brother of some people who worked for Anglo Fabrics. (*Id.*) Bruell testified that Zarazinski said to him: "You know how it is. They are against Polish people." (*Id.*) Zarazinski stated that he wanted to file a complaint and that Bruell should help him with it. (*Id.*) Bruell wished Zarazinski luck but said that he could not help him because Bruell did not know anything about the case. (Tr. at 164-65.)

A few days or weeks later, Zarazinski applied for a position at Anglo Fabrics, using Bruell's name as a reference. (Tr. at 165.) On April 10, 1988, Respondent hired Zarazinski as a "tacker operator" in the Wet Finish Department. (Tr. at 19.) The tacker operator is required to fold fabric with his hands while operating a stitching control device with his foot. (Heidecker Aff. ¶ 4.) The job requires physical coordination and dexterity to perform efficiently. (*Id.*) It is undisputed that Complainant was unable to operate the machine (*see* Tr. at 30-32) and was consequently terminated on April 13, 1988. (*See* Tr. at 30; Ex. ALJ-1, ¶ 3; Ex. ALJ-4, ¶ 4.)

On May 31, 1988, Respondent rehired Zarazinski as a "filling carrier" in the weave room. (Tr. at 32.) A filling carrier is required to select the yarn which is to be spliced onto the end of the yarn bobbin which is already on the weaving loom. (Heidecker Aff. ¶ 4.) After selecting the appropriate yarn, the filling carrier deposits the new bobbin next to the loom for the loom operator's use. (*Id.*) This job requires knowledge of the color and texture characteristics of the many different yarns used by Respondent. (*Id.*) According to Respondent, "Complainant was unable to make the proper yarn selections without constant assistance from his supervisors. His supervisor at that time said that Complainant was not doing his job properly. (Tr. at 33.) As a result, Zarazinski did not function effectively in the job, despite an extended learning period." (*Id.*) Bruell did not follow Complainant's progress because it was not Bruell's job to do so. (Tr. at 165.) Zarazinski was laid off on September 16, 1988.⁶ (Tr. at 32.)

On September 26, 1988, Respondent rehired Zarazinski as a "material handler" in the Worsted Winding Department. (Tr. at 32; Heidecker

⁶ Complainant disputes that he was responsible for choosing the correct yarn. (*See* Compl.'s Version of Facts ¶ 2). He does not allege, however, that he was discharged from this job because of unlawful discrimination.

Aff. ¶ 4.) The material handler moves yarn bobbins and rolls of finished fabric around the factory. (Heidecker Aff. ¶ 4.) In addition, he does odd jobs, such as sweeping and helping truck drivers load and unload their cargo. (*Id.*) His supervisor at that time was Gary White. (Tr. at 33.) White, a foreman at Anglo Fabrics, has worked for the company for 11 years. (Tr. at 151.) Bruell has been White's immediate supervisor since White was a foreman. (Tr. at 156, 158.) Zarazinski performed satisfactorily in this position, except for three disciplinary warnings for wearing sandals on the job instead of safety shoes as required.⁷ White never received any complaints concerning Zarazinski's conduct at Anglo Fabrics. (Tr. at 156.)

Zarazinski was laid off for lack of work on January 26, 1990. (Heidecker Aff. ¶ 4.) He was recalled on April 10, 1990 and again laid off for lack of work on July 9, 1990. (*Id.*) On August 14, 1990, Respondent recalled Zarazinski as a "material handler" in the Wool Winding Department. The duties of a material handler in the Wool Winding Department are generally similar to those of a material handler in the Worsted Winding Department, however, the Wool Winding Department is larger and has more machines and operators. (*Id.*) This has the effect of speeding up the material handler's job. (*Id.*) It is undisputed that because Zarazinski did not function effectively in this job, he was laid off on September 28, 1990. (Tr. at 35; Heidecker Aff. ¶ 4.)⁸

On May 6, 1991, Respondent rehired Zarazinski as a "material handler" in the Worsted Winding Department. (Tr. at 38.) His supervisor

⁷ Complainant does not dispute the fact that he wore improper shoes but contends that others who were not U.S. citizens were allowed to wear improper shoes. (Compl.'s Version of Facts ¶ 3.) It is difficult to understand why Respondent would want to distinguish between the safety of its citizen and non-citizen employees. As Complainant is still listed on Respondent's employment roster as laid off and subject to recall when an additional material handler is required in the Worsted Winding Department (Antos Aff. ¶ 10), however, I found this alleged difference in treatment to be irrelevant and immaterial to the charges in this case. Amended Decision & Order at 5 n.5.

⁸ Complainant states that on June 4, 1990, he was injured at Anglo Fabrics and was unable to work for two weeks. (Tr. at 35.) He states that he went back to work before his injury had completely healed but admits that he did not tell his employer about his physical disability because he needed the job. (Compl.'s Version of Facts at ¶ 4.) He later testified, however, that these are not the facts. (Tr. at 35.) He testified: "After doctor give me okay, I went back to work. It was nothing serious." (Tr. at 36.) He further stated, "I don't want to be lazy, stay at home. I want to work." (Tr. at 37.) Complainant's injury may account for some of Complainant's poor work performance and supports Respondent's statement that Complainant did not satisfactorily perform his job as a material handler in the Wool Winding Department.

was Gary White. (Tr. at 38.) At about that time, the work mix in this department began to change. (Heidecker Aff. ¶ 4.) Previously, Respondent had been called upon to produce worsted fabrics which contained yarn which had to be twisted. (Id.) The actual twisting of the yarn added an extra step to the production process. (Id.) This created a lot of additional work for the material handlers, who had to shuttle the material between work stations. (Id.) Complainant stated that he was assigned to be two places at the same time, so some of the other employees complained about him not bringing them material, but his supervisor, Gary White, just told him to do what he could. (Tr. at 44-47.)

At about that time, Respondent received orders for worsted fabrics which did not require twisted yarn. (Heidecker Aff. ¶ 4.) It is undisputed that this change in demand eliminated the need for a material handler. (Tr. at 38-39; 43.) Gary White informed Zarazinski on July 8, 1991 that he was laid off for this reason. (Id.) To date, Anglo Fabrics has not received significant orders for the type of worsted fabric which requires twisted yarn. (Heidecker Aff. ¶ 4.) (Amended Decision & Order at 6.) Furthermore, the workload of the Worsteds Winding Department has decreased in the last two years. (Tr. at 167.) "[W]here the department at one time was running three shifts and it was reduced to -- not only two, but only a very partial second shift, and then even sometimes a very partial first shift, because of imports of yarns from . . . abroad." (Id.)

After Zarazinski was laid off from Anglo Fabrics in July 1991, every two to three weeks he would visit or telephone Respondent's Personnel Manager, Sally Antos, to ask whether a job was available for him. (Tr. at 39, 56, 185; Ex. ALJ-1, ¶ 5; Ex. ALJ-4, ¶ 7.) Zarazinski testified that Antos would say: "Nothing. Thank you very much. Have a nice day." (Tr. at 56.) Antos told Zarazinski that he did not need to file a formal written application for work but to collect his unemployment benefits and that she would telephone him once a suitable job opened up at the company. (Ex. ALJ-1, ¶ 6.) On some of these occasions, when Antos was unavailable, Bruell, the Superintendent of Anglo Fabrics, would assist Antos because Bruell spoke Polish, Zarazinski's native language, as well as fluent English. (Tr. at 186; Ex. ALJ-4, ¶ 7.)

In her many dealings with Zarazinski, Antos tried to tell him that if his former job became available, Zarazinski would be recalled. (Tr. at 204.) Antos states that she always tried to be polite to Zarazinski. (Id.) According to Antos, Zarazinski raised his voice to her every time he called and he would say "'Well, I'm going to write a letter,' or, 'You're

going to have to answer a lot of questions,' or things of that nature. And [Antos would] say, 'Just do what you have to do.'" (Tr. at 204-205.)

Complainant told Antos that he believed that Anglo Fabrics was hiring illegal aliens (Tr. at 70) or, more specifically, that Maria Rucinska and Jadwiga Kaminska were illegal aliens. (Tr. at 92.)

Complainant testified that these two Polish women who worked in the same department as he did (Tr. at 76) had come to the United States to visit relatives or to vacation (Tr. at 63-64, 75) and he therefore believed that they were on visas which did not permit them to work in the United States. Complainant testified that Maria Rucinska told him that she was an illegal alien. (Tr. at 63.) Later at the hearing, in response to the question whether both of those women told him that they were illegal aliens, he testified: "They -- Kaminska, for example, didn't have a Social Security Number. So, how exactly everything was is hard to say. I don't know much. I am not a detective." (Tr. at 76.) Complainant states that the reason he saw a lawyer after he spoke to Rucinska and Kaminska is "[b]ecause I find out they illegal, so how come they working and I not get the job." (Tr. at 64.) Complainant has also stated ". . . I have to work. I can't live on whatever, you know." (Tr. at 65.)

Antos testified that she told Zarazinski that his allegation was false because she had completed I-9 Forms for all of the employees. (Tr. at 192.) Antos said, "It's my business. It's not your business what we do here."⁹ (Tr. at 69, 71; see Ex. ALJ-1, ¶ 8.) Antos testified that she has no personal knowledge that any employee who worked for Anglo Fabrics while Zarazinski worked there was not authorized for employment in the United States. (Tr. at 191.) She further testified that she had no reason to believe that Rucinska and Kaminska were

⁹ In fact, INS regulations provide that:

Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the [INS] office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate [INS] office or by personally appearing before any immigration officer at [an INS] office.

8 C.F.R. § 274a.9 (1994).

not unauthorized for employment in the United States when they worked for Anglo Fabrics.¹⁰ (Tr. at 193, 203-204.)

Zarazinski last telephoned Antos on February 9, 1994 to ask if he was still eligible for work. (Tr. at 185, 207.) Antos told Zarazinski he was eligible for work as soon as there would be an opening in his department because that was the only place that Anglo Fabrics would place him. (Tr. at 170, 207.) Antos told Zarazinski to stop harassing her. (*Id.*) She states that he said he was not harassing her and she replied, "What do you call this? You know, these repeated calls?" (Tr. at 206.) Antos testified that this was the most hostile of their conversations. (Tr. at 208.) Zarazinski at that point in the hearing repeatedly stated to his interpreter, "Those are lies." (Tr. at 208.)

On one occasion, Zarazinski complained to Bruell that someone else had been hired to fill a material handler position in another department while Zarazinski remained laid off. (Ex. ALJ-4, ¶ 8.) Bruell reminded Complainant that "he had once attempted to perform [that] job without success but that if a material handler position opened up in the Worsted Winding Department, he would be recalled." (*Id.*) Bruell also states that on another occasion, Zarazinski told him that he did not want to sue the company but "wanted to settle his complaint then and there." (*Id.* at ¶ 9; Tr. at 182.) Bruell states that at that time, because he was aware that Zarazinski had initiated some legal action, he told Zarazinski that he did not "feel comfortable" discussing the matter with him. (Ex. ALJ-4 at ¶ 10.) Bruell further states that he told Zarazinski that "if and when a suitable position became available he was still on the list for recall." (*Id.*)

Zarazinski approached Bruell several times after each of the times he was laid off from Anglo Fabrics. (Tr. at 168-69.) Soon after each layoff, Zarazinski would ask Bruell "When are we going to have work?" Bruell would say he did not know and that "when something would come up, we would take him back." (Tr. at 169.) In 1991, after Zarazinski was laid off, he complained to Bruell that individuals he knew who neither had work permits authorizing them to work in the United States nor Social Security numbers, but were "working and being hired to work"

¹⁰ The fact that a company has completed a Form I-9 for an employee does not necessarily show that the employee was authorized for employment in the United States. Rather, it shows that the employer took the required step of preparing the Form I-9. The documents supporting the employee's attestation of employment authorization must "reasonably appear[] on [their] face to be genuine." 8 U.S.C. § 1324a(b)(1)(A). An employer need not be an immigration expert, however, as the employer may rely on a document that "reasonably appears on its face to be genuine." *Id.*

at Anglo Fabrics. (Tr. at 169; Compl.'s Ans. to ALJ's Interrogs.1 at ¶ 5.) Zarazinski said, "Look, that I'm a citizen and there are other people working who have just arrived and they're getting a job and I can't get my job back." (Tr. at 169.) Bruell testified that he responded "There is no work in your department. That job has been completely eliminated and has not been filled with anyone since." (Tr. at 170, 173.) Complainant contends that when he questioned the ethics of this type of hiring, Bruell told him that he did not care. Compl.'s Ans. to ALJ's Interrogs.1 at ¶ 5.)

Complainant states that later, at some point between July and September 1991, he telephoned Bruell at Anglo Fabrics and asked whether the company had a job for him. (Tr. at 84-85, 175.) Bruell stated that Complainant was on the list. Id. Bruell said he was busy and that he had a few things to talk to Zarazinski about and that he would call Zarazinski after 5:00 p.m., when Bruell finished work. (Tr. at 86, 174.) Zarazinski gave Bruell his home telephone number. (Id.)

Bruell telephoned Zarazinski that evening. (Tr. at 87.) During that conversation, Zarazinski referred to that fact that he was not working and stated "Well, I want to work." (Id.) Bruell said "When there will be a job in your department, you will be called back. You are on the list." (Tr. at 176; see also Tr. at 179 ("I informed him on at least two or three other occasions that, 'Unfortunately, we didn't have a job. The position is still open, but it has not been filled. There's no need to get this department going.")). Zarazinski then asked, "How long do I have to wait?" (Tr. at 87.)

According to Zarazinski, he then told Bruell why illegal aliens had work and he did not. (Tr. at 90.) Zarazinski testified that Bruell then called Zarazinski "crazy" in Yiddish (Tr. at 89). It is undisputed that Complainant then said that he was going to file a complaint against Anglo Fabrics in Washington. (Tr. at 92, 175-76.) Zarazinski testified that he said he would file the complaint with the "Labor Department and the Immigration Office." (Tr. at 92.) Zarazinski further testified that Bruell then said he was going to "wipe [Zarazinski's] nose." (Tr. at 93; see Ex. C-5 at ¶ 6 (alleging that Bruell stated, "I'm going to wipe your nose.")) In contrast, Bruell testified that he never asked Zarazinski not to file a complaint and never said "Please don't file a complaint." (Tr. at 182.) Rather, Bruell testified that in response to Complainant's statement that he would file a complaint, Bruell said "If

you file a complaint then my hands will be tied." (Tr. at 183, 177.)¹¹ Bruell denies that he ever stated to Complainant that he would "wipe [his] nose" if he filed a complaint against Anglo Fabrics or words to that effect. (Tr. at 170; Ex. ALJ-4, ¶¶ 3, 12.) Furthermore, Bruell denies that he has ever used the expression, "I'll wipe our nose." (Tr. at 173.)

Bruell testified that after that conversation, he inquired immediately with his supervisor if Zarazinski's former position was available, and learned that it was not. (Tr. at 176.) Zarazinski's position has not been filled since he left Anglo Fabrics because the company is buying worsted yarns, which are fine yarns from abroad. (Tr. at 174-75.) Therefore, "the department, which normally could produce X amount of yarns, X amount of pounds per week, produces only 30% of what the full capacity is." (Id.)

Zarazinski went to Anglo Fabrics several times in the weeks following that conversation at which times Bruell was not available. (Tr. at 177-78.) Between five and six weeks after the conversation, Zarazinski went to the company and spoke to Sally Antos. (Tr. at 178.) Antos went to Bruell's office and told him "Zarazinski is out there and wants to talk to you." (Tr. at 178.) Antos also stated that Zarazinski had filed an official complaint. (Tr. at 178-79.) Bruell went out of his office and told Zarazinski "My hands are tied. I have nothing to do with it." (Tr. at 178.) Bruell testified that he also said, "I will have to call my lawyer." (Tr. at 179.)¹² The fact that Zarazinski filed an official complaint has not affected his status on the recall list. (Tr. at 179.) Bruell so informed Zarazinski. (Tr. at 183.) Zarazinski therefore is still listed on Respondent's employment roster as laid off and subject to recall when an additional material handler is required in the Worsted Winding Department. (Ex. ALJ-1, ¶ 10.)

Subsequent to the conversation in which Bruell allegedly threatened to "wipe [Zarazinski's] nose," Zarazinski and Bruell saw each other at the Webster Post Office. (Tr. at 91, 182.) Zarazinski testified that he said "hello" to Bruell and that Bruell responded, "You went too far." (Tr. at 91.) Bruell testified that Zarazinski asked him about the job and that Bruell responded, "Look. My hands are tied. I mean, I don't want

¹¹ Complainant states that the telephone conversation was in both Polish and English. (Tr. at 98.) Bruell states that it was in Polish. (Tr. at 170, 176.)

¹² Bruell does not answer charges or complaints brought against Anglo Fabrics as it is not his job to take part in legal affairs of the company. (Tr. at 179.) Rather, that responsibility falls to Sally Antos, John Honig or Fred Natkin. (Id.)

to discuss with you. If there's any question, I would call the lawyer." (Tr. at 182.)

Walter Snyder, an attorney, wrote a letter dated October 28, 1991 on Complainant's behalf to the U.S. Department of Labor in order to complain that Anglo Fabrics was hiring illegal aliens instead of him. (Tr. at 59, 62-64, 78-79.) That letter states in relevant part: "Zarazinski, is personally aware that illegal aliens with questionable Social Security Numbers are being employed as part of [Anglo Fabrics'] work force and represent the actual reason for discriminating against him in the matter of his [failure to be rehired] by Anglo Fabrics." (Ex. C-3 at 1.)

Zarazinski testified that Snyder told him "to write to Washington, to Immigration, and there is a name, Victor Gabral . . ." (Tr. at 101.) After contacting Snyder, Complainant eventually contacted Volunteer Lawyers Service. (Tr. at 99-101.) In a letter dated June 9, 1992, Volunteer Lawyers Service informed Complainant that the office was not able to provide him with pro bono representation. (Ex. C-6.) Zarazinski also at some point contacted a charity called "Bishop Fund," but felt that "[he] was brushed off" and that "nobody paid attention" to him. (Tr. at 105.) Zarazinski then filed a charge with OSC and the complaint in this case. (Tr. at 100-101.)

III. *Discussion*

A. *Analysis*

The only issue remaining in this case is whether Respondent violated IRCA's antidiscrimination provisions by threatening Zarazinski because he intended to file a charge of discrimination against Respondent. The record shows that after Complainant was laid off from his job in July of 1991, he would visit or telephone Respondent's Personnel Manager, Sally Antos, to ask whether a job was available for him. (Tr. at 39, 56, 185; Ex. ALJ-1, ¶ 5; Ex. ALJ-4, ¶ 7.) Each time he Antos informed him that she would call him when something suitable opened up. (Ex. ALJ-1, ¶ 6.) Zarazinski also frequently asked Bruell when Anglo Fabrics would have work available for him. (Tr. at 168-69.) During a telephone conversation between Complainant and Bruell, Complainant stated that he was going to file a complaint against Anglo Fabrics. (Tr. at 92, 175-75.)

Complainant alleges that Bruell responded, that if Zarazinski were to do so, Bruell would "wipe [Zarazinski's] nose." (Tr. at 93; Ex. C-5 at

¶ 6.) Bruell emphatically denies that he made this statement to Complainant. (See Ex. ALJ-4, ¶¶ 3, 12.) Rather, Bruell testified that in response to Complainant's statement that he would file a complaint, Bruell said "If you file a complaint then my hands will be tied." (Tr. at 183, 177.) Bruell denies that he ever stated to Complainant that he would "wipe [his] nose" or words to that effect. (Tr. at 170; Ex. ALJ-4, ¶¶ 3, 12.) In addition, Bruell denies that he has ever used the expression, "I'll wipe our nose." (Tr. at 173.) Furthermore, Bruell testified that he never even asked Zarazinski not to file a complaint. (Tr. at 182.)

IRCA provides in pertinent part that:

It is . . . an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. An individual so intimidated, threatened, coerced, or retaliated against shall be considered, for purposes of subsections (d) and (g) of this section, to have been discriminated against.

8 U.S.C. § 1324b(a)(5).¹³

As I stated in the Amended Decision & Order:

Complainant may only prevail on his retaliation claim, however, if (1) he had a reasonable, good-faith belief that an IRCA violation occurred; (2) he intended to act or acted on it; (3) Respondent knew of Complainant's intent or act and (4) Respondent lashed out in consequence of it. See [*Mesnick v. General Elec. Co.*, 950 F.2d 816, 827 (1st Cir. 1991)] (setting forth a similar rule under Title VII) (citing *Petiti v. New*

¹³ IRCA was amended by the Immigration Act of 1990 ("1990 Act"), Pub. L. No. 101-649, 104 Stat. 4978. Section 534 of the 1990 Act bars retaliation against those seeking to enforce their rights under section 102 of IRCA. Pub. L. No. 101-649, 104 Stat. 4978, 5055, codified at 8 U.S.C. § 1324b(a)(5). This amendment applies to actions occurring on or after November 29, 1990.

OSC's regulations, codified at 28 C.F.R. § 44.201, already included an anti-retaliation provision which covered all actions occurring after the regulation's publication on October 6, 1987. The legislative history of section 534 of the 1990 Act makes clear that Congress intended to codify this anti-retaliation regulation which implements OSC's interpretation of section 102 of IRCA. See H.R. Rep. No. 955, 101st Cong. 2d Sess. 82-83 1990. OSC amended its existing regulation by recodifying section 44.201 as paragraph (a)(3) of section 44.200, and by correcting minor differences between section 44.201 and section 534 of the 1990 Act. See 56 Fed. Reg. 157, at 40247 and 40248 (August 14, 1991).

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England Tel. & Tel. Co., 909 F.2d 28, 31 (1st Cir. 1990); Manoharan v. Columbia Univ. College of Physicians & Surgeons, 842 F.2d 590, 593 (2d Cir. 1988)).

Amended Decision & Order, at 23.

I found in the Amended Decision & Order that because Rucinska and Kaminska both told Zarazinski that they had come to the United States to visit relatives or to vacation, Complainant's OSC charge was based on a reasonable, good-faith belief that Respondent's decision not to rehire Zarazinski was based on its preference to hire undocumented aliens, in violation of IRCA.¹⁴ (See id.; see also Tr. at 137.) Complainant clearly acted on that belief by filing the complaint in this case. Furthermore, the record indicates that Respondent knew of Zarazinski's intent to file a complaint against the company. (Tr. at 175-76.) Zarazinski, however, has failed to prove the fourth element and therefore cannot prevail on his claim that Respondent threatened him in violation of 8 U.S.C. § 1324b(a)(5). For the reasons discussed below, I do not find credible Zarazinski's allegation that Bruell threatened to "wipe his nose" if he filed a complaint against Anglo Fabrics.

1. Complainant's Conduct and Demeanor

Zarazinski's conduct and demeanor at the hearing form part of the basis for my finding incredible his allegation that Bruell threatened him. (See, e.g., Tr. at 208-212.) Complainant clearly was highly frustrated with Respondent for hiring non-citizens instead of him and for allegedly hiring aliens unauthorized for employment instead of him.¹⁵ Zarazinski's testimony was at times very apologetic for bringing this case. (See Tr. at 159 ("I don't want to raise the hell no more."))

¹⁴ The B-2 visa (visitor for pleasure), available, for example, to tourists and those coming for social visits, does not permit employment in the United States. 8 U.S.C. § 1101(a)(15)(B); 8 C.F.R. 214.1(e) (1994).

¹⁵ Even if Rucinska and Kaminska were unauthorized for employment in the United States, there is no evidence in the record that Respondent knew or should have known of such status. Respondent prepared I-9 forms for them and the documents supporting their eligibility to work in U.S. appeared legitimate. (See Ex. R-5 [copy of Form I-9 for former Anglo Fabrics employee Jadwiga Kaminska, and copy of her Social Security card and driver's license]; Ex. R-6 [copy of Form I-9 for former Anglo Fabrics employee Maria Rucinska, and copy of her Social Security card and driver's license].)

Zarazinski stated, however, that it was his right as an American citizen to do so. (See Tr. at 121, 210-211.)¹⁶

Zarazinski was also at times complimentary to witnesses who were testifying favorably towards him and was frequently ingratiating to the ALJ. But when a witness made unfavorable or incriminating remarks about him, he became unruly. For example, when Antos testified that Zarazinski had been rude to her in several conversations, he interrupted the proceedings and yelled from his seat at the counsel table that she was "a liar." (Tr. at 208.) In addition, at various times throughout the hearing, Complainant was argumentative and unresponsive to questions. His conduct and demeanor suggested that he was volatile and short-tempered and that he would have fabricated the threat in order to prevail on his claim.

2. Complainant's Lack of Character Testimony

My finding that Complainant's allegation that Bruell threatened him is not credible gains further support by the fact that Zarazinski's only character witness, Gary White, testified that he did not know Zarazinski well enough to vouch for his credibility. (Tr. at 154.) Nor could White give an opinion as to whether Zarazinski has a reputation for truthfulness. (Id.)

3. Complainant's Prior Inconsistent Statements

This finding is further bolstered by Zarazinski's prior inconsistent statements. Complainant for the first time alleged that Bruell threatened to "wipe [Zarazinski's] nose" in response to an interrogatory I directed him to answer early in this case. Following up on Complainant's bare allegation at paragraph 14 of his complaint that "Anglo told me not to file this complaint." I directed Complainant to answer the following:

You have stated in your complaint that Anglo told you not to file a complaint. Did [Respondent] state what would happen to you if you did file a complaint? Did Anglo or any . . . employee or supervisor of Respondent threaten to do anything to you if you filed a complaint of discrimination? If so, identify that person and state what, if anything, was said to you.

¹⁶ Zarazinski apparently feels that as a U.S. citizen, he is more entitled than a non-citizen to a job in the United States. (See Tr. at 210-211.) IRCA, however, does not so provide. While the statute authorizes an employer to prefer a U.S. citizen over an equally qualified non-citizen, 8 U.S.C. § 1324b(a)(4), the statute does not mandate that the employer do so.

Order of November 6, 1992 at 5, ¶ 6.

In response, Complainant stated: "When I told Edwin Bruell that I would file a complaint he said, 'I'm going to wipe your nose.'" Compl.'s Ans. to ALJ's Interrogs.1 ¶ 6. Complainant subsequently repeated this allegation and elaborated on the circumstances surrounding it in Complainant's letter in response to an order I had issued directing the parties to submit additional evidence (Ex. C-4), Compl.'s Ans. to ALJ's Interrogs.2 (Ex. C-5) and his testimony at the hearing (see, e.g., Tr. at 84-90).

I find that Complainant's trial testimony regarding the alleged threat and the same allegation in his pleadings, however, are not credible because they are inconsistent with his prior statements. For example, Zarazinski did not indicate to the two lawyers he consulted, Jan Chiarretto, with Volunteer Lawyers Service (see Ex. C-6) and Walter R. Snyder Jr. (Tr. at 102) nor to OSC (see Ex. R-3 [charge])¹⁷ that Bruell threatened to "wipe [his] nose" or that Bruell threatened Zarazinski in any way. Nor did Zarazinski inform the CAHO of any threat by any of Respondent's agents. See Complaint ¶ 14 (alleging merely that "Anglo told me not to file this complaint.").¹⁸ Zarazinski's prior inconsistent

¹⁷ In his charge form, prepared by Complainant's daughter and his lawyer at the time, Snyder (Tr. at 126, 133), Complainant did not check off the box indicating retaliation for asserting his rights. (Tr. at 129; see Ex. R-3 at ¶ 4.) Complainant states that the reason for the omission is "[he] felt that it was all fine, was done fine." (Tr. at 131.)

¹⁸ In a letter dated June 22, 1992 from Zarazinski to the Chief Administrative Hearing Officer ("CAHO"), Complainant informed the CAHO of his complaint. (See Complaint, Ex. 1.) That letter does not mention that Bruell threatened Complainant. (Tr. at 138-39.) Complainant testified that the reason he did not mention the threat in that letter was "[b]ecause [he] wanted to be nice and polite . . . because [Bruell] was helpful at certain times. He did help [Zarazinski] a lot." (Tr. at 139.)

In the formal complaint that Complainant filed a few weeks later, however, Complainant marked a box "yes," next to the statement, "I was intimidated, threatened, coerced or retaliated against because I filed or planned to file a complaint or to keep me from assisting someone else to file a complaint." (Compl. ¶ 14.) In the space on the form complaint which states "Explain what happened to you," Zarazinski wrote, "Anglo told me not to file this complaint." (Id. at 14(a).)

The complaint does not say that Bruell threatened to wipe Complainant's nose. (See Compl. ¶ 14.) Complainant testified that when his daughter filled out the form complaint for him, she said "Well, . . . what should be written will be written." (Tr. at 142.) Zarazinski testified that he told her that she did not put in the complaint the allegation that Bruell had stated he would wipe Zarazinski's nose if he filed a complaint. (Id.)

statements therefore further support my finding that his allegation of threat is not credible.¹⁹

4. Bruell's Credibility

My finding is further bolstered by Bruell's credibility. Bruell denied threatening Complainant and specifically denied saying he would "wipe [Complainant's] nose" because it is something he did not say and would not say. (Tr. at 173.) Based on Bruell's education, conduct, demeanor, credible testimony and the testimony of all other witnesses, including Complainant, regarding Bruell's character (see Tr. at 157-58 [White testified that Bruell was a truthful person]; Tr. at 187-90 [Sally Antos, who has seen Bruell each work day since 1988 and has worked with Bruell on various projects testified that she believed Bruell was a truthful person and testified that she never heard Bruell use a threatening expression with any employee.]), I conclude that Bruell would not and did not use such a phrase. I further find that even if Bruell told Zarazinski not to file a complaint, it is not credible from the record in this case that Bruell threatened Complainant with physical harm for planning to file a complaint against Anglo Fabrics or if he would file such a complaint.

5. Other

In addition to the above, I find it incredible that Bruell, a highly educated, well-spoken and dignified 75-year-old man who had been kind and considerate to Zarazinski ever since Zarazinski began working for Respondent (see Tr. at 139 (Complainant testified that "[Bruell] did help me a lot.") threatened Zarazinski, who was 20 years younger and appeared much stronger than Bruell. In addition, I believe that even if Bruell was angry with Zarazinski, he would not have threatened him because it would not have been his way of handling a difficult person.

Rather, Complainant's minimal education and rural background suggest that he might use the phrase "I'll wipe your nose" to indicate a threat. Furthermore, Complainant's extreme frustration with his inability to obtain work as demonstrated throughout this proceeding

¹⁹ Furthermore, Zarazinski never attempted to inform either of Bruell's bosses, John Honig or Fred Natkin, that Bruell had stated that he was going to "wipe [Complainant's] nose" if he filed a complaint against the company. (Tr. at 144.) Zarazinski admitted that other than informing me through his answers to interrogatories I had issued that Bruell allegedly threatened to "wipe [Complainant's] nose," he only told his wife and children that such an act took place. (Tr. at 104, 142.)

suggest that he created the the threat as an afterthought after reading paragraph 6 of my Order of November 6, 1992 at 5, ¶ 6 in order to make a case under the statute and/or to have leverage for pressuring Respondent into offering him money or a job.²⁰ This was evidenced by Zarazinski's far greater interest in how much money he would be awarded for prevailing on his claim than in assisting the fact finder in developing the factual record in this case. (See, e.g., Tr. at 211 ["The only thing I want to know is whether I can have employment and whether will I be compensate (sic)."]); Tr. at 121 ["I would like to know whether I have compensations or not, but I would like to work."].

B. Conclusion

As Complainant has failed to prove his claim that Respondent threatened him in violation of 8 U.S.C. § 1324b(a)(5), the complaint in this case is dismissed.

This Decision and Order is the final administrative order in this case, pursuant to 8 U.S.C. § 1324b(g)(1). Not later than 60 days after entry, Complainant may appeal this Decision and Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. 8 U.S.C. § 1324b(i)(1).

SO ORDERED this 14th day of July, 1994 in San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge

²⁰ I did not find Complainant's story completely untruthful-- only the part dealing with the alleged threat. As discussed above, I found that Zarazinski honestly (although incorrectly) believed that Respondent was hiring unauthorized aliens in lieu of hiring him, and that he filed the complaint in this case thinking that he had not been hired because of his citizenship status or national origin.